



Civil Resolution Tribunal

Date Issued: February 6, 2019

File: SC-2017-005725

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Qurban et al*, 2019 BCCRT 144

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Akbar Qurban and RDS Auto Sales Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a contract for waste disposal services. The applicant, Super Save Disposal Inc., says the respondents, RDS Auto Sales Ltd. (RDS) and Akbar

Qurban, breached the parties' contract when they failed to make payments as required and purported to terminate the contract contrary to its terms. The applicant claims \$1,616.40 in debt and 24% contractual interest, plus \$3,382.60 in liquidated damages.

2. Mr. Qurban admits the debt, but feels the 24% contractual interest is unfair and that the liquidated damages claim is "outrageous".
3. The applicant is represented by an employee, Marli Giesel. Mr. Qurban is self-represented and RDS is not participating, as discussed below.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondent breached the waste disposal contract between the parties, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. At the outset, I note only Mr. Qurban filed a Dispute Response, although RDS was allegedly served by delivering a copy of the Dispute Notice personally to Mr. Qurban. Mr. Qurban was listed as the customer on the waste disposal contract, noting that he was "DBA Akbar Auto Repair Ltd.". There is no evidence that the applicant contracted with RDS or that RDS is a successor company to Akbar Auto Repair Ltd. In these circumstances, I dismiss the applicant's claim against RDS. My analysis below relates to Mr. Qurban's personal liability, noting that the applicant did not name Akbar Auto Repair Ltd. as a respondent.

Debt claim

11. The applicant claims a total of \$1,616.40 in debt.
12. It is undisputed that the respondent accepted the applicant's bins and services in September 2014. The applicant issued invoices for waste services that were provided, but as of the end of March 2016 Mr. Qurban stopped paying them. Mr. Qurban admits he owes the debt, but appears to dispute the 24% contractual interest, saying it is unreasonable and unexpected.
13. The outstanding invoice balances, exclusive of interest, between March 31, and November 21, 2016 total \$1,441.58. I order Mr. Qurban to pay this amount.

14. What about the 24% contractual interest, which applies to the debt portion of the claim? It is clear 24% per year was agreed to by the parties, as set out in the contract. Based on the applicant's March 27, 2017 statement, the applicant charged \$212.99 in "service charges", which refers to the contractual interest. Contractual interest on the \$1,441.58 through to the date of this decision would be around \$645.
15. As detailed below, I have awarded the applicant \$3,221.52 in liquidated damages. This amount, plus the \$1,441.58 in debt totals \$4,663.10.
16. The tribunal's monetary limit is \$5,000. I have recently issued a decision that contractual interest must together with the principal debt fall within the tribunal's monetary limit, given binding decisions from the Provincial Court to this effect (see *EASYFINANCIAL SERVICES INC. v. Rosvold*, 2019 BCCRT 68). I find the same analysis applies to this case. This means the maximum contractual interest available is \$336.90, given the tribunal's monetary limit. I therefore order \$336.90 in pre-judgment contractual interest on the \$1,441.58 debt award.

Liquidated damages

17. It is undisputed that the applicant and Mr. Qurban signed a 2-year contract for waste disposal services on September 20, 2014, with an effective date of October 1, 2014.
18. The contract's relevant terms are as follows (my bold emphasis added):
 - a. The customer will pay all monthly charges, including any increases or decreases or additional charges.
 - b. The contract starts on the effective date and runs for 2 years. The respondent can terminate the contract by providing not more than 120 days and not less than 90 days written notice, by registered mail, before the end of the term or any renewal term (the 'cancellation window') (Clause 2).
 - c. If the respondent purports to terminate the agreement before the term's expiry, the applicant may, at its option, accept the respondent's repudiation,

and in that case **the respondent agrees to immediately pay liquidated damages consisting of all amounts owing to the end of the term** (Clause 11).

19. On July 22, 2016, the applicant telephoned Mr. Qurban about payment, and Mr. Qurban said he would be moving. It is undisputed the applicant advised Mr. Qurban of the remaining term left on the agreement. It is also undisputed that Mr. Qurban in response said that he would look into the possibility of taking the bins to the new address and that he would let the applicant know.
20. On September 15, 2016, the applicant contacted Mr. Qurban about the outstanding invoices. Mr. Qurban confirmed he had moved 2 months prior and said that he did not need the applicant's services. The applicant informed Mr. Qurban he never informed the applicant that he moved, which I find is an inaccurate statement, given the July 22, 2016 conversation. However, the material undisputed point is that Mr. Qurban had never requested cancellation as per the contract. In particular, as referenced above, Mr. Qurban needed to send a letter by registered mail between June and July 2016.
21. In other words, even if Mr. Qurban had cancelled by registered mail on September 15, 2016, it was too late. The effect of Mr. Qurban's failure to cancel within the cancellation window is that the contract renewed for another 2 years, effective October 1, 2016. This is the basis for the liquidated damages claim, 24 months of a lost income stream for this automatically renewed contract.
22. On September 16, 2016, the applicant sent Mr. Qurban a letter informing him that services had been suspended due to non-payment, and requested payment of the arrears. In the letter, the applicant also informed Mr. Qurban of its liquidated damages claim.
23. On October 13, 2016, the applicant removed their bins from the respondent's premises.

24. I turn to the respondent's argument that the liquidated damages clause is outrageous. I acknowledge prior decisions that found disposal service contracts are onerous. However, the court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered virtually identical language involving the applicant and found the contract enforceable. While I am not bound by other tribunal decisions, I am bound by the BC Supreme Court's decision in *Tristar* (for similar reasoning see also: *Super Save Disposal Inc. v. Paul's Metal Service Inc.*, 2018 BCCRT 191, *Super Save Disposal Inc. v. Gill's Dream Enterprise Ltd.*, 2018 BCCRT 298, and *Super Save Disposal Inc. v. K.M.I. Holdings Ltd.*, 2018 BCCRT 285). I note the *Tristar* decision overrides the Provincial Court's decision in *Super Save Disposal Inc. v. Angel Glass Corp.*, [2015] B.C.J. No. 1191, a case in which the adjudicator concluded a liquidated damages clause similar to the one before me was unconscionable. However, I also note the Provincial Court has more recently noted that *Tristar* was binding, in *Northwest Waste v. Andreas Restaurant Ltd.*, 2016 BCPC 395.
25. In short, while the contract's terms are onerous, they are enforceable. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. The parties' contract states that if the service agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages, in the amount of the remaining monthly payments owing under the agreement. The respondent took no steps to terminate the waste contract in the manner required under its terms.
26. Given my conclusions above, I find the respondent breached its contract with the applicant when it purported to terminate the contract and failed to pay invoices as required. This means the applicant is entitled to liquidated damages under the contract, which is the then-current rates of \$94.33 and \$39.90 per month x 24 months, for a total of \$3,221.52. This total is consistent with the applicant's invoices #1831580 and 1831581 dated November 21, 2016 for the "early termination fee". However, I do not agree the applicant is entitled to GST on the liquidated damages, as no goods or services were provided to attract GST.

27. I find the applicant is entitled to \$3,221.52 in liquidated damages, plus pre-judgment interest on that amount under the *Court Order Interest Act* (COIA), calculated from the applicant's invoice date of November 21, 2016. Interest under the COIA is excluded from the tribunal's monetary limit, as are tribunal fees and any dispute-related expenses. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute it is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

28. Within 30 days of this decision, I order Mr. Qurban to pay the applicant a total of \$5,249.16, broken down as follows:

- a. \$1,441.58 in debt,
- b. \$3,221.52 in liquidated damages,
- c. \$336.90 in pre-judgment interest at 24% annually,
- d. \$74.16 in pre-judgment interest under the COIA, and
- e. \$175 for tribunal fees.

29. The applicant is also entitled to post-judgment interest under the COIA, as applicable. The applicant's claims against RDS are dismissed.

30. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

31. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has

been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair